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June 2021 Newsletter

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1. NASW's Private Practice Guidelines
2. Ethics Question of the Month: Records request and Summaries
3. Send your ethics and practice related questions to LsTsukroff@aol.com for the August Newsletter

NASW's Private Practice Guidelines

What an honor it has been to serve on NASW's volunteer Task Force to revise the NASW Private Practice Guidelines over the past 3 years! I'm pleased to announce that the Guidelines are currently under review by NASW's clinical, legal and ethics teams and should be published before the end of 2021. As this labor of love comes to a close, I am reflecting upon this enlightening experience.

Being asked to share my expertise in issues impacting private practitioners through the lens of social work ethics is my passion. I never dreamed that I would have been given the opportunity to collaborate with my skilled and committed co-authors from across the country.

I want to publicly thank Mary Jean Weston, MSW, LCSW (Former Acting Executive Director of NASW-NJ) for nominating me, encouraging my participation and supporting me through the process.

On June 16, from 12:00 to 1:00 pm EST, NASW's "An Hour with Private Practice" will be providing registrants with a sneak peak of this updated text. I will be speaking briefly about minor's rights and my fellow co-authors will highlight additional sections of the document. This event is free to NASW members. For dial-in information visit <https://www.socialworkers.org/practice/an-hour-with-private-practice>

Ethics Question of the Month

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The following questions were culled from my Audit-Proof Progress Notes workshop which is available for rental @
<https://www.leslietsukroff.com/workshop-videos>

In response to a records request, is it acceptable to write a summary instead? Yes, as long as the client consents a summary in lieu of the medical record.

If you attended my Audit Proof Progress Notes Workshop, you are aware (with some exceptions) HIPAA and other Federal Laws, including the 21st Century Cures Act, many state professional licensing regulations and professional Ethics Codes grant clients the right to access to their medical records and grant others access to their medical record. Similarly, these laws and guidelines give clinicians permission to provide a summary of the medical record.

When is it acceptable to write a summary in response to a records request from a client?

- As long as the client requests or consents to a summary
- The summary should accurately reflect the client's history and treatment
- If the record contains information in which the professional reasonably believes would negatively affect the client's health or welfare

Important factors to consider

- When omitting information from the summary or providing a summary in lieu of the entire medical record, a written rationale should accompany the summary.
- Although not always required by law (check your state laws) or ethical guidelines, best practice is to have clients request a copy of their record/summary in writing. (According to New Jersey professional licensing regulations, NJ Social Workers **are required** to obtain this request in writing, while a NJ Psychologists and NJ Licensed

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Professional Counselors may accept records requests verbally or in writing.

- Clients should provide consent to the **specific** information being released in the summary. Blanket authorizations to disclose “all records and information pertaining to the client/contained in the medical record” are too broad and violate “minimum necessary” standards outlined under HIPAA, state laws and ethics codes. For example:
 - HIPAA 164.502 states that in order to protect client confidentiality, the clinician must make a reasonable effort to limit the disclosure of protected health information to the minimum necessary to achieve the intended purpose. @ <https://www.govinfo.gov/content/pkg/CFR-2013-title45-vol1/pdf/CFR-2013-title45-vol1-sec164-502.pdf>.
 - According to the NASW Code of Ethics, “Unless otherwise required by law, client request and/or client consent, medical records summaries should include “the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made should be revealed.” (1.07 (c))
- It is strongly advised that clients are given the opportunity to review the summary before the clinician releases it to the third party. This meets the ethical guidelines and legal mandates pertaining to informed consent and release of confidential information.

Is it acceptable to charge a client for the cost of drafting a summary?

Yes, but clients must be informed of these fees up front and must consent to these fees.

- In NJ, all professional discipline’s licensing regulations permit their licensees to charge a reasonable fee for the preparation of a summary.
- The fee should not exceed the actual cost of photocopying or transcription.
- Clients should be provided information regarding the fees associated with drafting a summary and are required to consent to associated

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fees at the outset of the request. If not include already, it is strongly advised that you add a section to your practice fee policy/agreement outlining the costs associated with release of records/preparation of summaries.

If I am conducting telehealth, can I charge the client for snail mailing the summary?

- Yes, as long as the client is informed **up front** and consents to the costs associated with mailing the summary, you may charge the client the **actual cost** of mailing.
- If the client requests the summary via e-mail, then the clinician is obligated to comply with this request, unless they do not have the technical capability of e-mailing the document. If the clinician does not have a HIPAA secure means of e-mailing documents, discuss with clients the extended limits to confidentiality when e-mailing documents through an insecure channel. Clients must also consent to receive insecure transmissions.

Final thoughts

- Due to the complexity of records requests/preparation of treatment summaries, varying state and federal laws and differing guidance based on professional disciplines, clinicians are urged to consult their specific state licensing regulations, all applicable state and federal laws, and guidance from their professional membership organizations and professional Ethics Codes for more detailed information on release of records, informed consent, confidentiality and access to records.
- Document, Document, Document. Remember to thoroughly and accurately document any and all communications with clients and third parties regarding the records/summary request
- Provide the client with a final copy of the summary for their record-keeping (if summary is going directly to the third party)
- When in doubt, seek consultation from a knowledgeable and reputable source. Professional liability carriers often provide free legal

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guidance to their policy holders and many professional membership organizations offer legal and ethics consultation to their members.

- Leslie S. Tsukroff, MSW, LCSW offers consultations to help clinicians determine best course of actions upon receipt of a records request from clients and/or third parties.

Coming in the August Newsletter

- Like most therapists, I will be taking some time away from the office/computer screen in July.
- The Newsletter will resume in August with new workshop dates, the introduction of “An Hour with Ethics,” noteworthy topics impacting practitioners and much more!
- Your ethics and practice related questions. Each month, I will feature answers to your burning questions. Please, be careful to provide general questions so as to protect the confidentiality of all involved. Submit questions to LsTsukroff@aol.com

As always, thank you for reading. Wishing you and the ones you love a happy, healthy and safe summer-

Leslie

This document is for general informational purposes only and is not intended to be used as advice (legal, ethical or technical) or as a substitute for the guidance of an attorney or an individualized consultation. It does not address all possible clinical, legal and ethical issues that may arise, nor does it take into consideration the particular circumstances, nuances or concerns of the situation or person(s) involved. Leslie S. Tsukroff, Inc. does not assume any responsibility or liability for any errors or omissions in its content.